

NAME OF AGENCY: South Florida Water Management District

RULE TITLE:

RULE NUMBER:

Publications, Rules, and Interagency

40E-4.091

Agreements Incorporated by Reference

PURPOSE AND EFFECT: Rule 40E-4.091(1)(a), F.A.C., incorporates by reference the "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District - January, 2001" (ERP BOR). Included as part of the ERP BOR are Appendices 2, 3, and 6. This rulemaking initiative proposes to amend Appendix 6, entitled "Above Ground Impoundments" by revising the reporting requirements and the typical special condition language.

SUMMARY: Appendix 6 of the SFWMD's ERP BOR specifies for the benefit of the regulated community the appropriate criteria applicable to the construction and operation of above ground impoundments associated with surface water management systems. An above ground impoundment is defined in Section 373.403(1), F.S., as a "dam", which means "any artificial or natural barrier, with appurtenant works, raised to obstruct or impound, or which does obstruct or impound, any of the surface waters of the state." Specifically, the proposed revisions to Appendix 6 clarify that inspection reports of the conditions of such above ground impoundments must be retained by the permittee and made available to SFWMD staff upon request. Additionally, the typical special condition for all above ground impoundments sets forth with particularity that permittees must inspect on an annual basis the above ground impoundment, control structure, levee and berm for structural integrity and memorialize the inspection via a report signed and sealed by a Florida Professional Engineer. In the event that any

deficiencies are found which may impact off-site areas, the report must detail proposed techniques and schedules for repairs, as necessary, and be submitted to SFWMD staff.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No statement of estimated regulatory costs has been prepared by the SFWMD. Substantially affected persons, no later than 21 days from the publication date of this notice, may submit to the SFWMD a good faith written proposal for a lower cost regulatory alternative to this proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule, so long as the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. The proposal shall be timely submitted to the contact person named below.

SPECIFIC AUTHORITY: 373.044, 373.113, 373.171, 373.413, F.S.

LAW IMPLEMENTED: 373.413, 373.4135, 373.416, 373.418, 373.421, 373.426, F.S.

A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: April 11, 2002, 8:30 a.m.

PLACE: South Florida Water Management District Headquarters, Auditorium, 3301 Gun Club Road, West Palm Beach, FL 33406.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

Penelope Bell, South Florida Water Management District, 3301 Gun Club Road, MSC 1410, West Palm Beach, FL 33406, telephone 1-800-432-2045, extension 6320,

Suncom 229-6320 or (561) 682-6320 or via email at pbell@sfwmd.gov. Although

Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record

of the proceeding is made, including testimony and evidence upon which any appeal is to be based. Persons with disabilities or handicaps who need assistance may contact Garrett Wallace, District Clerk, at 561.682.6371 at least two business days in advance to make appropriate arrangements.

THE FULL TEXT OF THE PROPOSED RULE IS AS FOLLOWS:

40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference

(1) The following publications, rules and interagency agreements are incorporated by reference into this chapter, Chapters 40E-40, 40E-41, and 40E-400, F.A.C.:

(a) "Basis or Review for Environmental Resource Permit Applications Within the South Florida Water Management District -- _____ " ~~January 2001~~"

(b) through (j) No change.

(2) No change.

Specific Authority 373.044, 373.113, 373.171, 373.413, 373.441, 373.171 FS. Law Implemented 373.413, 373.4135, 373.4137, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426, 373.441, F.S. History -- New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00, 8-16-00, 1-17-01, 7-19-01,

_____:

(The following represents proposed amendments to "Appendix 6 - Above Ground Impoundments" of the document entitled "Basis of Review for Environmental Resource

Permit Applications Within the South Florida Water Management District - January 2001")

APPENDIX 6

ABOVE GROUND IMPOUNDMENTS

1.0 through 3.0 No Change

4.0 OPERATION AND MAINTENANCE

4.1 Reporting

Inspection Reporting of impoundment conditions, repairs, etc. will be a continuing process required by permit special condition. Inspection reports are to be retained by the permittee and copies made available to the District upon request. ~~The District will indicate those general areas of interest for which reporting is required, but it~~ It is the basic responsibility of the permittee to initiate interim reporting and/or more detailed reporting to the District as conditions change, emergencies or problems arise, etc. It is expected that Major impoundments will be reported in accordance with the operation and maintenance manual and emergency response and evacuation plan adopted at the time of permit issuance, with updates as necessary.

4.2 No Change

4.3 Typical Special Condition

4.3.1 UPON COMPLETION OF CONSTRUCTION, AND ON AN ANNUAL BASIS (IN MARCH OF EACH YEAR) THE PERMITTEE SHALL HAVE AN INSPECTION PERFORMED TO ASSESS THE STRUCTURAL ADEQUACY OF ALL ABOVE GROUND DIKES, CONTROL STRUCTURES, LEVEES AND BERMS BEHIND WHICH WATER IS TO BE CONTAINED AND WHERE FAILURE COULD IMPACT OFF-SITE

AREAS. A PROFESSIONAL ENGINEER REGISTERED IN THE STATE OF FLORIDA SHALL PERFORM EACH INSPECTION AND PREPARE EACH REPORT. THESE REPORTS SHALL BE SIGNED AND SEALED BY THE PROFESSIONAL ENGINEER PERFORMING THE INSPECTION, KEPT ON FILE BY THE PERMITTEE AND MADE AVAILABLE TO SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD) PERSONNEL UPON REQUEST. IF DEFICIENCIES ARE FOUND THAT WILL AFFECT THE PERFORMANCE OF THE IMPOUNDMENT, A REPORT WHICH IS SIGNED AND SEALED BY THE ENGINEER PERFORMING THE INSPECTION SHALL BE SUBMITTED TO THE DISTRICT WHICH INCLUDES, BUT IS NOT LIMITED TO, THE PROPOSED TECHNIQUE AND SCHEDULE FOR REPAIR OF ANY DEFICIENCIES NOTED.

4.3 ~~Typical special permit conditions~~

~~4.3.1. Upon completion of construction, or alteration the permittee shall submit a report to this District of engineering adequacy of all above ground dikes, levees and berms behind which water is to be contained and where failure could impact off-site areas. Such reports shall include proposal of technique and schedule for repair of any deficiencies noted, and shall be signed and sealed by a Florida registered professional engineer.~~

4.3.2 ~~On a semi-annual basis (in May and December of each year), the permittee shall submit reports to this District of engineering adequacy of all above ground dikes, levees and berms behind which water is to be contained and where failure could impact off-site areas.~~

5.0 No Change

NAME OF PERSON ORIGINATING THE PROPOSED RULE: Terrie Bates, Director,
Environmental Resource Regulation Department.

NAME OF SUPERVISOR WHO APPROVED THE RULE: Chip Merriam, Deputy
Executive Director, Water Resources Management.

DATE PROPOSED RULE APPROVED: February 14, 2002.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN THE FAW:
February 1, 2002.